

## **EXHIBIT 9**

**John T. Winemiller**

---

**From:** James Burton <jburton@kmclaw.com>  
**Sent:** Wednesday, April 24, 2013 4:26 PM  
**To:** John T. Winemiller; Brad Brittian  
**Cc:** Joshua Rupp; Heather Bartlett; Catherine Winslow  
**Subject:** PPS v. Passport  
**Attachments:** Final Scheduling Order JTB edits042413.docx

John and Brad:

Please let me know if this language works. If so, please give your permission to file.

---

James T. Burton  
**Kirton McConkie**  
1800 World Trade Center  
60 East South Temple  
Salt Lake City, Utah 84111  
Direct: (801) 323-5998  
Office: (801) 328-3600  
Fax: (801) 321-4893  
email: [jburton@kmclaw.com](mailto:jburton@kmclaw.com)

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION**

PPS DATA, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

PASSPORT HEALTH COMMUNICATIONS,  
INC., a Delaware corporation,

Defendant.

Case No.: 2:12-cv-00438-RJS-DBP

Judge Robert J. Shelby

**[PROPOSED] SCHEDULING ORDER**

Pursuant to Federal Rule of Civil Procedure 16(b), the Court received the Attorneys' Planning Meeting Report filed by counsel. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**PRELIMINARY MATTERS:**

- a. The Rule 26(f)(1) conference was held on July 9, 2012.
- b. The Attorney Planning Meeting form was submitted on August 15, 2012.
- c. Rule 26(a)(1) initial disclosures were due and exchanged on July 31, 2012.

**DISCOVERY LIMITATIONS:**

- a. Judge Campbell's Local Patent Rules shall govern this action.

1.		<b>DISCOVERY LIMITATIONS</b>	
	a.	Maximum Number of Depositions	70 hours total per side, not including expert depositions, and no more than 20 total depositions per side, of which there can be no more than 10 depositions of either parties' employees
	b.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	Governed by FRCP 30
	c.	Maximum Interrogatories by any Party to any Party	Governed by FRCP 33

	d.	Maximum request for admissions by any Party to any Party	Governed by FRCP 36
	e.	Maximum requests for production by any Party to any Party	Governed by FRCP 36
	f.	Discovery of electronically stored information:	<p><del>Each party shall be entitled to provide up to 25 search terms to be used in the search for responsive email, for each one of the twenty-five search terms, the requesting party will designate five custodians whose emails will be searched using that one search term; the requesting party may designate a different group of five custodians for each one of the twenty-five search terms. The parties shall work together to refine the agreed keywords as necessary to reduce the occurrence of non-responsive documents in the pool of documents to be promoted for review. Further, in the event that the email messages initially produced indicate that it would be productive to search the email of additional custodians using a particular keyword, the parties shall work together to formulate reasonable additional searches. If the parties are unable to agree on such additional searches, they shall promptly consult the Court for guidance. The parties shall agree to 25 search terms to be used in the search for responsive ESI. With respect to email, each search term will be used to search the email of no more than five identified custodians, the identify of whom will be discussed in a meet and confer after the search terms have been provided. The twenty-five agreed keywords will also be used to search all non-email ESI for responsive documents. The parties shall work together to refine the agreed keywords as necessary to reduce the occurrence of non-responsive documents in the pool of documents to be promoted for review. Further, in the event that the email messages initially produced indicate that it would be productive to search the email of additional custodians using a particular keyword, the parties shall work together to formulate reasonable additional searches. If the parties are unable to agree on such additional searches, they shall promptly consult the</del></p> <p><u>Each party shall be entitled to provide up to 25 search terms to be used in the search for responsive email, for each one of the twenty-five search terms, the requesting party will designate five custodians whose emails will be searched using that one search term; the requesting party may designate a different group of five custodians for each one of the twenty-five search terms. The parties shall work together to refine the agreed keywords as necessary to reduce the occurrence of non-responsive documents in the pool of documents to be promoted for review. Further, in the event that the email messages initially produced indicate that it would be productive to search the email of additional custodians using a particular keyword, the parties shall work together to formulate reasonable additional searches. If the parties are unable to agree on such additional searches, they shall promptly consult the Court for guidance.</u></p>
	g.	Claims of privilege or protection as trial preparation material asserted after production shall be handled as follows:	The parties have stipulated to a mutually-agreeable protective order.

2.		<b>AMENDMENT OF PLEADINGS/ADDING PARTIES</b>			
	a.	Last day to file Motion to Amend Pleadings	30 days after claim construction order		
	b.	Last Day to File Motion to Add Parties	Same day as Preliminary Infringement Contentions		
3.		<b>RULE 26(a)(2) REPORTS FROM EXPERTS</b>	<b>DATE</b>		
	a.	Party bearing proof as to any issue. Plaintiff bears proof as to ownership, infringement, and damages. Defendant bears proof as to invalidity.	90 days after Claim Construction Order		
	b.	Rebuttal reports	120 days after Claim Construction Order		
4		<b>OTHER DEADLINES</b>	<b>DATE</b>		
	a.	<u>Parties to Jointly Submit Scheduling Order After Issuance of Claim Construction Order</u>	<u>7 days after Claim Construction Order</u>		
	ba.	Close of Fact Discovery	60 days after Claim Construction Order		
	bc.	Close of Expert Discovery	150 days after Claim Construction Order		
	ed.	Deadline for filing dispositive or potentially dispositive motions	180 days after Claim Construction Order		
5.		<b>CLAIM CONSTRUCTION DEADLINES</b>	<b>DATE</b>		
	a.	Disclosures of Accused Instrumentalities	11/16/2012		
	b.	Plaintiff may serve discovery requests pursuant to Rule 4(A)(1)	11/16/2012		
	c.	Production of paper documents related to Accused Instrumentalities pursuant to Rule 4(A)(2)	01/23/2013		
	d.	Deposition of Defendant's	03/15/2013		

		30(b)(6) designee pursuant to Rule 4(A)(4)	
	e.	Preliminary Infringement Contentions and document production pursuant to Rule 4(E)	03/15/2013
	f.	Disclosure of Priority Dates	03/15/2013
	g.	Disclosure of Covered Instrumentalities	03/15/2013
	h.	Disclosure of Willful Infringement Claim	03/15/2013
	f.	Preliminary Invalidity Contentions and document production pursuant to Rule 6(A)	04/30/2013
	g.	Exchange of terms and phrases to be construed	05/10/2013
	h.	Meet and confer to finalize list of terms and phrases to be construed	05/20/2013
	i.	Service of preliminary proposed constructions of each claim term or phrase to be construed	05/31/2013
	j.	Meet and confer to narrow issues and finalize preparation of Joint Claim Construction and Prehearing Statement	06/10/2013
	k.	Filing of Joint Claim Construction and Prehearing Statement	07/01/2013
	l.	Close of claim construction discovery	07/31/2013
	m.	Plaintiff's opening claim construction brief	08/16/2013
	n.	Defendant's responsive claim construction brief	09/06/2013
	o.	Plaintiff's reply claim construction brief	09/13/2013
	p.	Markman hearing	Oct or Nov 2013

	q.	Advice of Counsel Disclosures pursuant to Rule 9(A)	30 days after claim construction order
6.		<b>SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION</b>	<b>BOTH PARTIES</b>
	a.	Referral to Court-Annexed Mediation	No
	b.	Referral to Court-Annexed Arbitration	No
	c.	Settlement probability:	Poor
7.		<b>TRIAL AND PREPARATION FOR TRIAL</b>	
	a.	Rule 26(a)(3) Pretrial Disclosures	
		Plaintiff	<u>00/00/00</u>
		Defendant	<u>00/00/00</u>
	b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	Governed by FRCP 26(a)(3)
	c.	Special Attorney Conference on or before	<u>00/00/00</u>
	d.	Settlement Conference on or before	<u>00/00/00</u>
	e.	Final Pretrial Conference	<u>   </u> : <u>   </u> .m.
	f.	This case should be ready for trial by:	July 2014
	g.	Trial: Jury Trial	5-7 days

BY THE COURT:

---

U.S. District Court Judge

4825-3398-8115.1